AGNES LIM KOAY TEE

v.

ANG LAI SOON

HIGH COURT BORNEO, KUCHING
RICHARD MALANJUM JC
[JUDICIAL SEPARATION PETITION NO. KG1 OF 1992]
3 JULY 1992

FAMILY LAW: *Claim for maintenance pending divorce suit - Whether wife should receive maintenance as a matter of right pending suit - Award of maintenance based on the immediate need of financial support from the husband - Section 77 Law Reform (Marriage Divorce) Act 1976 - Crucial factor to consider when allowing payment of maintenance under s. 77.*

The wife-petitioner in this matter applied to Court pursuant to s. 77(1)(a) Law Reform (Marriage and Divorce) Act 1976 for maintenance pending the hearing and disposal of her petition for judicial separation.

Counsel for the wife-petitioner argued that as long as matrimonial proceedings were pending, the petitioner was entitled as of right to obtain maintenance.

Held:

[1] There was an obvious discretionary power given to the Court under s. 77 Law Reform (Marriage and Divorce) Act 1976. Therefore the wife-petitioner is not entitled as of right to obtain maintenance pending suit.

[2] The crucial factor in exercising the Court's discretionary power to allow payment of maintenance pending suit was the immediate need of the applicant. The burden lies on the wife to show immediate need of financial support.

[3] On the facts, there was no evidence of that need. The wife had her own income from a business-related source and immovable property to her name. Her statements merely show she required financial support to keep her living in her accustomed life style.

[4] The wife's delay in replying to her husband's affidavit showed further that she was not in need of immediate financial support.

[Application dismissed with costs.]

Cases referred to:
Waller v. Waller [1956] 2 All ER 234 ***(refd)***
Peacock v. Peacock [1984] 1 All ER 1069 ***(refd)***
Corbett v. Corbett [1970] 2 All ER 654 ***(refd)***

Legislation referred to:
Law Reform (Marriage and Divorce) Act 1976, s. 77(1)(a)

For the wife/petitioner - Ivan Ong; M/s. Lim Tan & Partners
For the husband/respondent - J.C. Fong; M/s. Reddi & Co.

JUDGMENT

Richard Malanjum JC:

This is an application by the wife-petitioner for maintenance pending suit under s. 77(1)(a) of the Law Reform (Marriage & Divorce) Act 1976 (hereinafter called "the said Act"). The application of the wife-petitioner is by way of summons in chambers dated 18 March 1992 supported by an affidavit affirmed on 22 January 1992. The wife-petitioner has on 22 January 1992 filed a petition for judicial separation from the husband-respondent.

The husband-respondent is contesting the petition as well as this application. He filed an affidavit in reply affirmed on 30 April 1992 in opposing this application.

Learned Counsel for the wife-petitioner submitted that so long as there is a pending matrimonial proceeding the wife-petitioner is entitled to come to Court for maintenance pending suit and the Court is obliged to grant the order. He further submitted that as the wife-petitioner has made allegations in her affidavit in support of this application that is sufficient reason for the Court to grant the maintenance pending suit.

On the other hand learned Counsel for the husband-respondent submitted that for the wife-petitioner to succeed she must show just cause for living apart from the husband-respondent. Other surrounding circumstances must also be considered by the Court before exercising such a discretion. He further submitted that this is more so in this case where the wife-petitioner did not respond to the issues raised in the affidavit in reply of the husband-respondent.

With respect to the learned Counsel for the wife-petitioner I do not think that just because there is a pending matrimonial proceeding it is a matter of right that the wife-petitioner should get maintenance pending suit. Such a submission is contrary to the obvious discretionary power given to Court by s. 77 of the said Act. The crucial factor to consider by the Court in exercising its discretion to allow payment of maintenance pending suit is the immediate need of the applicant. See: Waller *v. Waller* [1956] 2 All ER 234; *Peacock v. Peacock* [1984] 1 All ER 1069; *Corbett v. Corbett* [1970] 2 All ER 654. In this case the wife-petitioner must show that she is in immediate need of financial support from the husband-respondent.

On reading the affidavit in support filed by the wife-petitioner I am not satisfied that she is in fact in immediate need of financial support. All she has stated is that she has been accustomed to a life of ease and affluence and therefore entitled to live in such a manner. It is obvious from this statement that the wife-petitioner is not so much in immediate need of financial support but more to maintain her life style which she claims to have been accustomed to.

Indeed she is not disputing that she is receiving salary from the jewellery business and also has a house in her own name in Kuching. Another matter which supports my belief that the wife-petitioner is not in immediate need of financial support is the fact that after the filing of the petition and the summons in chambers there appears to be no further action taken by the wife-petitioner such as giving the necessary instruction to her Counsel with regard to the affidavit in reply of the husband-respondent. In fact two adjournments had to be made to allow her to take such step but nothing came out of it. Her conduct therefore is not consistent with a person in need of immediate financial support.

In view of my decision as given I do not think it is therefore necessary to go into the argument advanced by learned Counsel for the husband-respondent. Those issues should be left at the hearing proper of the petition.

I therefore dismissed this application with costs. Lastly, as I have indicated before that the Court is prepared to give an early date of hearing for this case if the parties are ready. I will leave it to the learned Counsels for the parties to do the necessary preparation.

Also found at [1992] 4 CLJ 1965